

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

DAN G. VERHAAG, SR., a single)	
person, and WAYNE and ROBERTA)	No. CV-11-277-LRS
VERHAAG, a marital community,)	
)	
Plaintiffs,)	ORDER DENYING MOTION TO
)	RECONSIDER
vs.)	
)	
STEVENS COUNTY, et al.)	
)	
Defendant.)	
)	
)	

BEFORE THE COURT is the *pro se* Plaintiffs' motion to reconsider this Court's *sua sponte* dismissal of Plaintiffs' case for lack of subject matter jurisdiction. (ECF No. 12). This motion is heard without oral argument. (ECF No. 13). For the reasons set forth below, the Court denies Plaintiffs' Motion to Reconsider (ECF No. 12) and affirms the Order of Dismissal. (ECF No. 10).

I

A Fed. R. Civ. P. 59(e) motion for reconsideration can only be granted when a district court: (1) is presented with newly

1 discovered evidence; or (2) committed clear error or the initial
2 decision was manifestly unjust; or (3) there has been an
3 intervening change in controlling law. *Dixon v. Wallowa County*,
4 336 F.3d 1013, 1022 (9th Cir. 2003). Plaintiff has not presented
5 newly discovered evidence nor alleged there has been a change in
6 controlling law. Therefore, this Court reviews the Order of
7 Dismissal (ECF No. 10) for clear error and manifest injustice.
8

9 This Court dismissed Plaintiffs' case for lack of
10 jurisdiction. (ECF No. 10). Article III grants the judiciary
11 jurisdiction to resolve "Cases ... arising under this
12 Constitution, the laws of the United States, and treaties."
13 Accordingly, this Court has jurisdiction over "civil actions"
14 that arise under the Constitution, laws, or treaties of the
15 United States. 28 U.S.C. § 1331.
16

17 II

18 Plaintiffs fail to assert a cause of action arising under
19 the Constitution, laws, or treaties of the United States. In
20 the Order of Dismissal, this Court summarized Plaintiffs' claims
21 as follows:
22

23 "[t]he seven claims for relief listed by the
24 Plaintiffs in their Complaint (ECF No. 6) are all
25 based on common law or Washington statutory law ... In
26 conjunction with the Plaintiff's claim for fraud there
27 is a reference to alleged violations of 'Title 43
28 U.S.C., Antiquities Act' and the 'Congressional
Ordinance of the Cadastral Survey.'"

1 (ECF No. 10 at 1). In their motion for reconsideration,
2 Plaintiffs affirmed the Courts recitation of their claims by
3 again alleging several state based real property claims, and by
4 alleging "a violation of congressional ordinance", "the
5 antiquities act" and Title 43 U.S.C. Additionally, the
6 Plaintiffs assert "this court has overlooked our constitutional
7 right to a fair trail." (ECF No. 12 at 1)(Error Original).
8

9 A. Congressional Ordinance

10 Plaintiffs' allege a violation of congressional ordinance
11 because "federal section lines have been moved or altered."
12 (ECF No. 12 at 1). "It is well established that a controversy
13 in respect of lands has never been regarded as presenting a
14 Federal question merely because one of the parties to it has
15 derived his title under an act of Congress." *Virgin v. County of*
16 *San Luis Obispo*, 201 F.3d 1141, 1143 (9th Cir. 2000) citing
17 *Shulthis v. McDougal*, 225 U.S. 561, 569-70, 32 S.Ct. 704, 56
18 L.Ed. 1205 (1912). Accordingly, the mere claim that the federal
19 government originally established section lines by way of
20 congressional ordinance or that said section lines are now being
21 altered on the Plaintiffs' private property, does not confer
22 jurisdiction on this Court.
23

24 B. 43 U.S.C.

25 In their motion for reconsideration, Plaintiffs misstate
26 the scope of 43 U.S.C. by claiming:
27
28

1 "The Federal Government is responsible to maintain the
2 cadastral survey by way of congressional ordinance.
3 The ordinance clearly states that the Department of
4 Interior must resurvey a section line in dispute
5 whether it is a government agency, federal lands or
6 private land. **TITLE 43 U.S.C. Cadastral surveys in
7 general create, re-establish, mark and define
8 boundaries or tracts of land. The BLM is required to
9 perform Cadastral Surveys on all Federal interest and
10 Indian lands and all private land claims. Such
11 surveys cannot be ignored, repudiated, altered or
12 corrected, and the boundaries created or re-
13 established cannot be cannot be [sic] changed so long
14 as they control rights vested in the lands affect."**

15 (EFC No. 12 at 2)(Emphasis Original).

16 Contrary to Plaintiffs' assertion, 43 U.S.C. states "all private
17 land" surveys are to be conducted only "so far as may be
18 necessary to complete the survey of the public lands." 43 U.S.C.
19 § 52. Plaintiffs have not claimed that a survey of their
20 privately held land is necessary to complete a survey of public
21 lands. Plaintiffs' only claim is that they, as private land-
22 owners engaged in a dispute, are entitled to Cadastral Survey
23 under 43 U.S.C. Accordingly, 43 U.S.C. does not confer
24 jurisdiction on this Court.

25 C. Antiquities Act

26 The Plaintiffs' accurately state the "Antiquities Act
27 reinforces the preservation of said historical and or
28 artifact[s] [sic] that is of concern to the people." (ECF No.
12 at 2). Plaintiffs have not claimed that their land is a
historical monument or artifact of such public interest that is

1 protected by federal statute. Accordingly, the Antiquities Act
2 does not confer jurisdiction on this Court.

3 **III**

4 Upon review it is again "clear this is a boundary dispute
5 governed by state law" and any "alleged violations of "'Title 43
6 U.S.C., Antiquities Act' and the "Congressional Ordinance of the
7 Cadastral Survey'" do no confer jurisdiction on this Court. (ECF
8 No. 10 at 1-2). Because Plaintiffs fail to assert a cause of
9 action arising under the Constitution, laws, or treaties of the
10 United States, this Court's Order of Dismissal does not
11 constitute plain error nor is it manifestly unjust.
12

13
14 Plaintiffs' Motion to Reconsider (ECF No. 12) is hereby
15 **DENIED** and the Order of Dismissal is hereby **AFFIRMED**. (ECF No.
16 10).

17 **IT IS SO ORDERED.** The District Executive is directed to
18 enter this order and forward copies to the parties.
19

20 **DATED** this 5th day of December, 2011.

21 *s/Lonny R. Suko*

22
23 _____
24 LONNY R. SUKO
25 United States District Judge
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27
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